

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4418 of 2014 (O&M)
Date of decision:- 15.07.2015

Mukta Sharma & another

...Appellants

Versus

Punjab State and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Munish Bhardwaj, Advocate
for the appellants.

Mr. Vaibhav Sharma, DAG, Punjab

Mr. Brijesh Kumar Sharma, Advocate
for respondent Nos. 3 and 4.

RITU BAHRI J.

Defendants-Appellants (for short 'the appellant') are in second appeal against the judgment and decree dated 01.05.2014 whereby the lower Appellate Court has reversed the judgment and decree dated 17.09.2013 passed by the learned trial Court.

The husband of appellant No. 1 and father of appellant No. 2 namely Devinder Kumar was working in the Police Department and expired on 29.01.2008. Earlier to the marriage with appellant No. 1, Davinder Kumar was married to one Simmi Sharma , which was dissolved later on by decree of divorce dated 06.06.2000. Out of that wedlock,

respondent No. 4 was born on 17.06.1997 who at present is residing with her grandmother i.e respondent No. 3. After the demise of her husband, appellants were entitled to pensionary benefits and department has also forwarded their case to A.G (A&E), Punjab and appellant No. 1 was also entitled for compassionate appointment. However, respondent No. 3 and 4 filed the present suit for declaration to the effect that they are entitled for the service benefits on the ground that deceased Davinder Kumar has made them nominee in his service record and claimed that respondent No. 4 is entitled for service on compassionate grounds on attaining the age of majority in place of deceased Davinder Kumar.

The appellants contested the suit by filing written statement and also filed counter claim and on merits, it is denied that the deceased had nominated plaintiffs/respondent Nos. 3 and 4 in his service record and that after his death, respondent Nos. 3 and 4 become entitled to entire service and pensionary benefits of the deceased to the exclusion of appellants.

Respondent Nos. 1 and 2 also filed written statement and on merits, admitted that deceased was a government employee of Police District Amritsar and expired on 29.01.2008 and submitted that as per record, deceased filed nomination form in favour of respondent No. 3 at the

time of his recruitment being bachelor at that time. AS per government instructions, legally wedded wife is entitled to get the pensionary benefits after the death of a government employee. Thus, the case of appellant No. 1 was sent to A.G (A&E) Punjab Chandigarh dully filled in all respect vide memo dated 08.04.2008. However, disbursement of monetary benefits of deceased are withheld after filing of the present suit upto decision of the suit.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiffs is entitled for the relief of declaration as prayed for? OPP
2. Whether the plaintiffs is entitled for the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiffs have no locus standi to file the present suit? OPD
4. Whether the plaintiffs have any cause of action to file the present suit? OPD
5. Whether the counter claimants is entitled for the relief of mandatory injunction as prayed for? OPCC
6. Whether the counter claimant is entitled for the relief of permanent injunction as prayed for? OPCC
7. Whether the counter claim is not legally maintainable? OPP
8. Whether the counter claimant have no locus

standi to file the counter claim? OPP

9. Whether the counter claim is not properly valued for the purpose of court fees and jurisdiction?

OPP

10. Relief.”

The trial Court after going through the entire evidence led by the parties, dismissed the suit of respondent Nos. 3 and 4 and partly decreed the counter claim filed by the appellants and gave a direction to respondent Nos. 1 and 2 to release the service benefits of the deceased in favour of counter claimant to the extent of their share except in due course of law and further they were restrained from releasing all the service benefits to respondent No. 3 to the exclusion of counter claimant except in due course of law.

The trial Court referred to the statement made by P.W.3 Ramesh Kumar who has produced the original documents of Ex P1 to P5 and proved them. He produced original form of nomination dated 22.05.2002 filled by Davinder Kumar and deposed that Ex P3 is true and correct copy of said nomination as per their record vide which Davinder kumar had nominated his mother Oma Rani as his nominee and in case of death of Oma Rani had made his daughter Rupam Sharma as the nominee along with himself. He further produced the original affidavit copy of which is Ex

P4 filled by Davinder Kumar in which he has nominated Oma Rani and Rupam Sharma as his nominee for entitlement of service benefits refund. P.W.3 further produced original application No. 3281 copy of which is Ex P2 made by deceased Davinder Kumar to the office of S.S.P and further produced original application filled by deceased Davinder Kumar copy of which is Ex P5 for change in the name of nomination from his wife to his mother Oma Rani. He further brought original Nomination Form E i.e nomination for family pension copy of which is Ex P8 filled by deceased Davinder Kumar in the name of his mother Oma Rani.

Reference was made to judgment of Amar Singh vs. Shashi Bala 2003(1) RCR (Civil) 659 (P&H) wherein it was held that nominee is only a ones to receive the money on behalf of the legal heirs. Further in Neelam Kushwaha vs. Chief Army Staff and another 2011(8) RCR (Civil) 1087 Delhi High Court, it was held that nominee rights and obligations of nominee trustee. In case of valid nomination the person who received the amount is not for his personal benefits but with the duty to disburse the same in proportionate to the share of legal heirs of the deceased according to law of succession. This preposition of law was settled in Mehtab Singh vs. Joginder Singh 2009(2)PLR 385 Punjab and Haryana High Court wherein it was held that succession-nominee-nominee is holder in due course and is treated in

law as trustee on behalf of all the claimants, but he could not seek precedence over actual claim of claimants who are legal heirs of the deceased and who have precedence over the nominee in the matter of succession.

On appeal filed by respondent No. 3 and 4, the Lower Appellate Court partly decreed the suit to the effect all appellants and respondent Nos. 3 were entitled to get the service benefits of deceased i.e G.P.F, gratuity, pension and other pensionary benefits etc in equal shares.

At the very outset, learned counsel for the appellants has referred to instructions dated 18.04.1991 whereby parents who were wholly dependent on the Government employee had left behind neither a widow nor a child. The parents whose total income from all sources was Rs.2620/-per mensem or more at the time of death of employee shall not be considered to be dependent.

The mother of the deceased i.e Oma Rani is getting pension of Rs.5000/- on account of death of her husband and hence she could not be said to be dependent on her son. She is not entitled for leave encashment and G.P.F of deceased Davinder Kumar as per rules, particularly when she is not dependent upon her son and is getting family pension of her husband and also received all other pensionary benefits of her late husband. Relevant Rules 13.1 and 13.2 of Punjab Civil Services Rules Vol.II reads as under:-

13.1. *The rules in this Chapter (called "The Punjab General Provident Fund Rules"), came into force on the 1st September, 1936. Subject to any express saving provisions in these rules, the rules regulating the General Provident Fund which were in force prior to 1st September, 1936 (vide Appendix 3), are superseded by these rules.*

3.2(1) *In these rules :-*

(a) *XXXXXXXXXXXXXXXXXXXXX*

(b) *XXXXXXXXXXXXXXXXXXXXX*

(c) *Family means.*

(i) *in the case of a male subscriber, the wife or wives, and children of a subscriber, and the widow, or widows and children of a deceased son of the subscriber :*

Provided that if a subscriber proves that his wife has been judicially separated from him or has ceased under the customary law of the community to which she belongs to be entitled to maintenance she shall henceforth be deemed to be no longer a member of the subscriber's family in matter to which these rules relate, unless the subscriber subsequently indicates by express notification in writing to the Accounts Officer that she shall continue to be so regarded ;

(ii) *in the case of a woman subscriber, the husband and children of a subscriber, and the widow or widows and children of a deceased son of a subscriber :*

Provided that if a subscriber by notification in writing to the Accounts Officer expresses her desire to exclude her husband from her family, the husband shall henceforth be deemed to be no longer a member of the subscriber's family in matter to which these rules relate, unless the subscriber subsequently cancels formally in writing her notification excluding him.

The above said rule clearly shows that mother is

not included in definition of family to claim G.P.F and it is only wife and children of deceased employee who are entitled to G.P.F. Respondent No. 3 is also not entitled for leave encashment because as per Rule 2.17 of the Punjab Civil Services Rules Vol.I though mother is included in the definition of family but to claim leave encashment she is required to show that she was dependent upon her deceased son.

Reference at this stage can be made to a Division Bench judgment of this Court in a case of Geeta Devi vs. Financial Commissioner & Principal Secy to Govt. Haryana and others, 2013(3) S.C.T 235 wherein it was held that dependent parents could not be excluded in the definition of Family as they are integral part of family. Non inclusion of the dependent parents in the definition of family in Rule 14 of the Rules is arbitrary and discriminatory. Two months time was granted to the respondents to incorporate suitable amendments in Rule 14 to move it out of the vice of arbitrariness. While interpreting Rule 6.17 B and 6.17 it was held that father and mother are added in the definition of family. So much so, adopted parents in case of individuals whose personal law permits adoption are brought within the umbrella of the aforesaid definition. They are entitled to payment of death-cum-retirement gratuity. They are also eligible for the grant of wound and other extraordinary

pensions as contemplated in Chapter VIII of the said Rules.

Hon'ble the Supreme Court in a case of State of Punjab and another vs. Devinder Kaur, 1999(9) SCC 12 while considering the case of family pension wherein government employee died in harness on 05.11.1985. at that time family pension Scheme, 1964 was in force, which did not include parents within the definition of family whereas the earlier scheme of 1951 and subsequent amendment to the Punjab Civil Services Rules which came into force w.e.f 01.01.1996 included parents also. It was held his parents not entitled to family pension but in view of pathetic circumstances of this case, Surpeme Court, in exercise of its powers under Article 142 awarding family pension to deceased's mother (father dyi8ng during pendency of the case). Her total income under the new scheme would not have exceeded Rs.2619 per month. She was already getting monthly pension of Rs.2500/- per month on account of her husband's death by terrorists. Difference of Rs.199 per month was directed to be paid to her on compassionate grounds from 01.08.1999 as the case was decided by the Supreme Court in the first week of August 1999. This direction further held not to be treated as precedent.

The ratio of the above said judgment is directly applicable to the facts of the present case as in the present

case, respondent No. 3 (mother of the deceased) has got the family pension on account of retiral benefits of her husband.

Recently in a Division Bench judgment of Jammu and Kashmir High Court titled as Ratno Devi vs. Union of India and others, 2014(2) J.K.J, 670, in para 10 of the judgment, it has been observed as under:-

10. The aforesaid definition of “family” remained in vogue for considerable period. Presumably, keeping in view the Indian scenario concerning dependent parents they have been included in the definition by para 7.2 of the Office Memo dated 27.10.1997 and the same reads as under:-

(26.) Dependent parents and widowed/divorced daughter also included in the definition of family:- For the purpose of grant of family pension, the definition of family shall also include:

(a.) Parents who were wholly dependent on the Government servant when he/she was alive provided the deceased employee had left neither a widow nor a child.

(b.) Son/daughter including widowed/divorced daughter till he/she attains the age of 25 years or upto the date of his/her marriage/re-marriage,

whichever is earlier.

2. Income criteria: The income criteria in respect of parents and widowed/divorced daughters will be that their earning is not more than Rs.2550/- per month. The parentss will get Family Pension at 30% of basic pay of the deceased employee, subject to a minimum of Rs.1275/- per month. They also will have to produce an annual certificate to the effect that their earning is not more than Rs.2550/- per month. Further, the Family Pension to the widowed/divorced daughter will be admissible till they attain the age of 25 years or up to the date of her re-marriage whichever is earlier.”

Thus, the dependent parents will have to give affidavit to the effect that they earning was not more than Rs.2550/- per month. In the present case, the respondents were directed to release family pension in favour of mother i.e respondent No. 3, when she was already getting pension of her late husband of Rs.5000/- per month.

Further as per Devinder Kaur's case (supra), the dependents parents would be eligible to claim pension, if their income is not more than Rs.2620/- per month, however, in the present case, respondent No. 3, is already

getting pension of her late husband of Rs.5000/- per month

P.W.1 Manpreet Singh has admitted that Om Rani was getting family pension of her late husband.

In view of this admitted fact, the judgment of the Lower Appellate Court requires modification to the extent that Oma Rani is not entitled to family pension of her son, as she is already getting pension of her late husband.

In view of the above, the judgment of the Lower Appellate Court is modified to the extent that appellants and respondent No. 4 are entitled to get the service benefits of deceased i.e G.P.F, gratuity, pension and other pensionary benefits etc in equal shares.

Accordingly, regular second appeal is allowed in the above terms.

July 15, 2015
G Arora

(RITU BAHRI)
JUDGE